W. 708. That an order for alimony is subject to appeal, because it partakes of the nature of a final judgment, see *Glenn* v. *Glenn,* 44 Ark. 46; *Sharon* v. *Sharon,* 67 Cal. 185, 7 Pac. 456, however, in this case there was a strong dissenting opinion by one of the justices. *Lochnane* v. *Lochnane,* 78 Ky. 467; *Borckman's Appeal,* 2 Walk. (Pa.) 285. In the following cases it was held that an appeal from an order of this nature would lie, the question as to whether the order was final or interlocutory, not being raised. *Foss* v. *Foss,* 100 Ill. 576; *Schuster* v. *Schuster,* 84 Minn. 403, 87 N. W. 1014; *Leslie* v. *Leslie,* 6 Abb. Prac. (N. S.) 193; *Schonwald* v. *Schonwald,* 62 N. C. (Phil. Eq.) 215; *Barker* v. *Barker,* 136 N. C. 316, 48 S. E. 733; *Moore* v. *Moore,* 130 N. C. 333, 41 S. E. 943. The above decisions all holding that an appeal will lie from an order of this nature, it seems that the principal case was decided according to the weight of authority. But the courts in some of the states hold that an order allowing alimony pendente lite is interlocutory and not final, and is, therefore, not subject to appeal. See *Wyatt* v. *Wyatt,* 2 Idaho 219, 10 Pac. 228; *Earls* v. *Earls,* 26 Kan. 178; *Malony* v. *Malony,* 9 Rob. (La.) 116; *Chappell* v. *Chappell,* 82 Md. 647, 33 Atl. 650; *Lapham* v. *Lapham,* 40 Mich. 527. *Cooper* v. *Mayhew,* 40 Mich. 528; *Abbey* v. *Abbey,* 6 How. Prac. (N. Y.) 189; *Moncrief* v. *Moncrief,* 10 Abb. Prac. (N. Y.) 315; *Earp* v. *Earp,* 54 N. C. (1 Jones Eq.) 118. In *Moncrief* v. *Moncrief* (supra), an appeal was not allowed, because if the husband could, by appeal, stay the proceedings, he could render nugatory the statute which authorizes alimony pendente lite, and the wife might, during the trial, be starved into submission. But in *Leslie* v. *Leslie* (supra), the appeal was allowed on the ground that an order granting alimony pendente lite affected a substantial right of one of the parties for which an appeal is given by the code. In *Earp* v. *Earp* (supra), it was held that an appeal would defeat the benevolent purpose of the statute allowing alimony pendente lite. However, this decision is no longer an authority in North Carolina as an appeal is allowed by the revised code. See *Schonwald* v. *Schonwald* (supra).

EQUITY—SWORN ANSWERS AS EVIDENCE—PROOF TO OVERCOME.—Sworn answers were filed to the interrogatories in a bill charging fraud and conspiracy. It was held that, although not contradicted by the testimony of any positive witness, the answers were sufficiently outweighed by the documentary evidence in the record and the circumstances of the case. *Snow et al.* v. *Hazlewood et al.* (1908), — C. C. A. 5th Cir. —, 157 Fed. Rep. 898.

SHELBY, J., in dissenting, said that "when the bill calls for answers under oath, and it is answered accordingly, the matters inquired about being within the personal knowledge of the respondent, the denials of the answer must be overcome by the evidence of two witnesses, or by one witness corroborated by circumstances which are equivalent in weight to another witness." There is no doubt that the rule is generally so stated. In this form it means to have its derivation in the maxim of the Roman civil law—Responsio unius non omnino audiatur. In *Clark* v. *Van Riemsdyk* (1815), 9 Cranch 153, cited in the principal case, Marshall points out, however, that there may be circumstances sufficient in themselves to outweigh even the answer of a defendant who

answers on his own knowledge. The same view is taken in *Long* v. *White* (1830), 5 J. J. Marsh. 226; *Gould* v. *Williamson* (1842), 21 Me. 273; *Field* v. *Wilbur* (1876), 49 Vt. 157; *Veile* v. *Blodgett* (1877), 49 Vt. 270; GREENLEAF ON EVIDENCE, Vol. III, § 289, and seems to be in accord with reason, if not with the weight of authority.

EVIDENCE—OPINION EVIDENCE IN ACTION FOR LIBEL.—Plaintiff, in a libel suit, where the words complained of were ambiguous, offered to put on as witnesses readers of the article to testify as to how they understood the words when they read them. *Held,* that the testimony was properly admitted (LAMM and GRAVES, JJ., dissenting). *Julian* v. *Kansas City Star Co.* (1907), — Mo. —, 107 S. W. Rep. 496.

The leading opinion is in harmony with *Howe Machine Co.* v. *Souder,* 58 Ga. 64; *Miller* v. *Butler,* 60 Mass. 71; *Knapp* v. *Fuller,* 55 Vt. 311. It is opposed by *Snell* v. *Snow,* 13 Met. (Mass.) 278; *Van Vechten* v. *Hopkins,* 5 Johns. (N. Y.) 211; *Gibson* v. *Williams,* 4 Wend. (N. Y.) 320; *White* v. *Sayward,* 33 Me. 322; *People* v. *Parr,* 42 Hun (N. Y.) 313; *Eaton* v. *White,* 2 Pin. (Wis.) 42. The dissenting opinion distinguishes between libel and slander, saying, "Where the words are spoken, intonation of voice, accent, gesture, and other things difficult and practically impossible to accurately describe to the jury, the opinion of non-expert witnesses, who were hearers of said words may be taken as to their meaning; but this rule should not apply to slander cases, where the words are unambiguous, and not accompanied by the things aforesaid, which are difficult to describe or reproduce before the jury, nor to libel cases." This distinction is entirely sound, but is not borne out by the cases on this subject. It is hard to see any reason for allowing opinion evidence on written words, which the jury after having been told all the surrounding circumstances, can read as intelligently as the witness can.

EVIDENCE—THE BEST EVIDENCE RULE.—Defendant offered to prove by a competent witness the testimony of a deceased witness, given at the previous trial of the same cause, and between the same parties. The testimony had all been taken down by an official stenographer. *Held,* the testimony should have been admitted, as the shorthand notes are not the best evidence. *Studabaker* v. *Faylor et al.* (1908), — Ind. —, 83 N. E. Rep. 747.

The case of *State* v. *Maloy,* 44 Iowa 104, holds that the reporter's notes are the best evidence of testimony given on a former trial; but as to this point, it stands alone. Most courts refuse to admit the report of an official stenographer under the circumstances. See WIGMORE, EVIDENCE, Par. 1689, and cases there cited. But the principal case does not go that far. It only holds that such a report is not the best evidence. At the present time statutes in several states provide for the admission of such a report.

FRAUDULENT CONVEYANCES—DELIVERY AND CHANGE OF POSSESSION OF GROWING CROPS.—A crop of prunes was grown on the homestead of a wife and her husband; the homestead having been selected by her from her separate property. In January, husband and wife entered into a parol agreement,